

ATTORNEY GENERAL'S OPEN RECORDS AND MEETINGS OPINION
No. 99-O-10

DATE ISSUED: December 7, 1999

ISSUED TO: Duane Schurman, Attorney, Freemont Township

CITIZEN'S REQUEST FOR OPINION

On October 28, 1999, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Jeff Amoth asking whether the Freemont Township Board of Supervisors violated N.D.C.C. § 44-04-20 by failing to grant his request for notice of its next meeting.

FACTS PRESENTED

In a letter dated October 15, 1999,¹ Mr. Amoth asked the Freemont Township Board of Supervisors (Board) for "all the minutes of every meeting in 98 and all minutes in 99 concerning my drainage problems." Mr. Amoth insisted that he receive the minutes within five days or he would bring a civil action against the Township. See N.D.C.C. § 44-04-21.2. His letter continued by stating: "I expect to be informed of the next meeting concerning my farm and if possible will attend." (Emphasis added). In a post-script to his letter, Mr. Amoth also stated: "I would also like a 2 day notice of your next meeting." (Emphasis added).

The Board held a special meeting on October 19 to address Mr. Amoth's request. The minutes provided to Mr. Amoth included the minutes of the October 19 meeting, which indicate that the meeting was a "special meeting" and was limited to discussing Mr. Amoth's request for records. Mr. Amoth alleges that the Board violated N.D.C.C. § 44-04-20 because it failed to provide him with notice of the October 19 meeting, which was the "next meeting" of the Board after he submitted his request for records.

¹ The letter Mr. Amoth sent to the Township and the copy he provided to this office are slightly different. This opinion is based on the letter provided to the township.

ISSUE

Whether the Board violated N.D.C.C. § 44-04-20 by failing to provide notice to Mr. Amoth of its October 19, 1999, meeting.

ANALYSIS

It cannot be reasonably disputed that the October 19 gathering of the Board to discuss the response it was required to make to Mr. Amoth's open records request involved the public business of the Board. Therefore, the gathering was a "meeting" required to be open to the public under N.D.C.C. § 44-04-19 and preceded by public notice under N.D.C.C. § 44-04-20. See N.D.C.C. § 44-04-17.1(8) (definition of meeting). Nor does the Board dispute, in its response to Mr. Amoth's request for this opinion, that it did not provide him with notice of the October 19 meeting. Rather, the Board disputes whether Mr. Amoth asked for notice of the Board's next meeting, or just its next meeting "concerning his farm."

In my opinion, Mr. Amoth's request for notice is clear. Although the request for notice in the body of Mr. Amoth's letter is limited to the next meeting concerning his farm, his letter later states: "I would also like a 2 day notice of your next meeting." (Emphasis added). Not only did Mr. Amoth choose not to limit this second request to the subject of his farm, his use of the term "also" indicates that his second request for notice is in addition to the request he made in the body of his letter.

N.D.C.C. § 44-04-20(5) requires that notice of a meeting be provided to any member of the public who requests it.² Because Mr. Amoth requested notice of the first meeting of the Board following his open records request, and because it is undisputed that the Board failed to notify him of that meeting, it is my opinion that the Board violated N.D.C.C. § 44-04-20.

CONCLUSION

² Although Mr. Amoth demanded two-days advance notice of the meeting, N.D.C.C. § 44-04-20 does not establish a minimum notice period. 1998 N.D. Op. Att'y Gen. O-70. Instead, the notice of a meeting must be posted, filed, and provided at the same time that the members of the governing body are notified of the meeting. N.D.C.C. § 44-04-20(5).

ATTORNEY GENERAL OPEN RECORDS AND MEETINGS OPINION
Freemont Township
December 7, 1999
Page 3

The Freemont Township Board of Supervisors violated N.D.C.C. § 44-04-20 by failing to comply with Mr. Amoth's request for notice of the Board's meeting on October 19, 1999.

STEPS NEEDED TO REMEDY VIOLATION

The appropriate remedy for failing to provide sufficient notice of an open meeting depends, in part, on what occurred at the meeting. Remedial steps required by this office in the past have ranged from convening a new meeting to repeat the discussion which occurred at the improperly noticed meeting, 1998 N.D. Op. Att'y Gen. O-27, to simply providing notice that the meeting occurred and making the minutes available to the public. 1998 N.D. Op. Att'y Gen. O-91. Here, Mr. Amoth is already aware that the meeting occurred and has received minutes of that meeting. The minutes indicate that the only topic considered during the meeting was Mr. Amoth's open records request, which the Board granted. Mr. Amoth would not have been entitled to address the Board about his records request even if he had been able to attend the meeting. Accordingly, no further remedial action is necessary to remedy the violation.

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